

TO
THE MEMBERS OF THE SCIENTIFIC JURY,
DETERMINED BY ORDER № R33-4705/25.09.2020
OF THE RECTOR OF UNIVERSITY OF PLOVDIV
PAISIY HILENDARSKI

OPINION

By Assoc. Prof. Dr. Miroslav Mityov Dimitrov, Law Faculty at UNWE - external member of the scientific jury, determined by Order R33-4705/25.09.2020 of the Rector of University of Plovdiv "Paisiy Hilendarski" of the materials submitted for participation in the competition for holding the academic position "Associate Professor" at University of Plovdiv "Paisiy Hilendarski", field of higher education 3. Social, economic and legal sciences, professional direction 3.6. Law, Civil and Family Law

1. Brief information about the competition, the candidate and the submitted materials

1.1. By order № R33-4705 of 25.09.2020 of the Rector of the University of Plovdiv "Paisiy Hilendarski" (PU) I was appointed an external member of the scientific jury of the competition for the academic position "Associate Professor" in PU, field of higher education 3. Social, economic and legal sciences, announced for the needs of the Department of Civil Law of the Law Faculty (LF).

1.2. In the competition for "associate professor", announced in the Darzhaven vestnik, issue 57 of 26.06.2020 and on the website of the PU, for the needs of the Department of Civil Law of the LF, as the only candidate involved Chief Assistant Prof. Angel Yordanov Shopov, PhD from PU. Angel Shopov was born in 1976, graduated from the LF of the University of Plovdiv in 1999, and obtained a master's degree in Law. Since 2001 he has been a lecturer at the Faculty of Law at the University of Plovdiv as an Assistant Professor, Senior Assistant Professor and currently Chief Assistant Professor. He has conducted seminars and lectures for law students in Civil Law – General Part, Obligations, NGOs, etc., and for non-law students - European Union Law and Intellectual Property Law. After successfully defending a dissertation on "Mistake as a ground for the nullification of contracts" in the IDP of BAS has obtained the educational and scientific degree PhD in Law.

The candidate has specialized in European universities - *Università per stranieri* in Perugia, Italy, TMC Acer Institute, The Hague, the Netherlands and the University of Fribourg, Faculty of Law, Switzerland and has developed individual research projects and also participated in several collective research projects.

Along with the teaching and research work since January 2019, the candidate also works as an arbitrator in the Arbitration Court at the Association for the Development of Law.

1.3. To participate in the competition, the candidate has submitted the following materials:

- two monographs - Mistake as a Ground for Nullification of Contracts. S.: Sibi. 2013 - monograph based on the defended dissertation and Deceit as a Ground for Nullification of Contracts. S.: Sibi. 2019 - monograph, representing habilitation work;

- eight pcs. articles and reports published in specialized legal publications and collections related to the topic of habilitation work - Judicial and Arbitration Practice On the Contracts' Avoidance, Caused by Deceit. Pravna misal, 2004, No 2; Notes about Two Questions, Which Are Observed by the Latest Judicial Practice, On the Border of Deceit and of Criminal Fraud. – In: Bourgas Free University. International Academic Conference. Collection of Scientific Works. Vol. 3. 11th -13th June 2004. Bourgas. 2004; *Dolus* and Deceit in Contracts' Formation. – In: 100 years from the birth of prof. Mihail Andreev. Sbornik statii. Sofiya. 2011, p. 542 – 550; The Crime “Fraud” and the Deceit in Contracts' Formation - A Comparison. - In: Iybileen sbornik po slutchay 100-godishninata ot rozhdenieto na akad. Liuben Vasilev i prof. Zhivko Stalev i 90-godishninata ot rozhdenieto na prof. Vitali Tadzher. S. 2013; On the Legal Requirements of Deceit in Contract Formation, *Studia iuris*, 2015, № 1; Deceit by Third Party in Contract Formation. - В: Право и права. Сборник в памет на проф. Р. Ташев. С., 2016, p. 462-477; *Dolus bonus* in Roman and Contemporary Law, *Ius romanum*, 2016, № 1, p. 285-295, <http://iusromanum.eu/i/2016-commercium>]; Contracts' Formation through Deceitful Omission - In: *Soft law and contemporary law*, S., 2017, p. 84-117.

The presented set of materials is in accordance with the Regulations for development of the academic staff of PU. The candidate fully meets the requirements for teaching experience and study load as a lecturer at the Law Faculty of the University of Plovdiv.

2. Evaluation of the publications submitted for participation in the competition

2.1. Central among those presented by the candidate in the competition Dr. Angel Shopov is his monographic study "Deceit as a Ground for Nullification of Contracts", which can be unequivocally defined as a habilitation thesis with significant scientific and scientific-applied qualities. The study has a total volume of 223 pages, with 142 footnotes referring to different sources. It is dedicated to current and significant, both from a scientific and practical point of view, issue related to the annulment of contracts on the grounds of deceit within the meaning of Art. 29 of the Law on Obligations and Contracts (LOC). The exposition is structured logically and correctly, it is organized in three chapters, divided into paragraphs and a conclusion, and the sources used by the author are indicated in the attached bibliography. It is the first particular monographic study in the Bulgarian legal literature, which comprehensively and thoroughly analyzes the factual composition of deceit as a ground for annulment of contracts under Bulgarian law. As a scientific apparatus, a rich bibliography is used, which covers over 100 Bulgarian titles and over 60 sources in foreign languages (English, French and Italian), as well as the main sources of the so-called "soft law" - Principles of European Contract Law, Principles of International Commercial Contracts (of UNIDROIT) and the Draft Common Frame of Reference. All available and current case law related to the scientific problems studied in the monograph is analyzed, including not only decisions of the Supreme Court of Cassation of the Republic of Bulgaria, but also judicial acts of courts at all levels of the judicial hierarchy.

In the first chapter, the author presented some psychological aspects of the discrepancy between will and declaration, as a consequence of various factors, citing deceit as one of the vices of will, regulated by the legislator, as a legal projection of life understanding of fraud. The same chapter traces in a fascinating style the development of deceit in contracting over the centuries from ancient Rome, through the Middle Ages and the French Revolution to the present day. A comparative legal analysis of the researched institution of deceit in the French Civil

Code, the German Civil Code and the Italian Civil Code was made, and the regulation in these codes was compared with that in the LOC. The second chapter of the monograph occupies a central place in it and can be defined as the most essential part of the study, containing the most scientific and scientific-applied contributions. This chapter clarifies in detail and solidly the peculiarities of the factual composition of deceit and the three elements of the composition - deliberate misleading, misconception of reality and the conclusion of a contract by the deceived under the influence of misconception. The third chapter is devoted to the so-called by the author "Special cases of deception". As such, the cases in which the deceit comes from third parties are analyzed. In this chapter the author has made a detailed comparison of deceit and criminal fraud, outlining their fields of application and deriving criteria for the relationship between the compared factual compositions, as a result of their application he has reached significant conclusions, which can be highly appreciated as a scientific contribution and will be noted below. In the conclusion of the work the author has summarized concisely and clearly the main results of his research and has made reasonable suggestions for improving the legislation.

As a general impression after reading the monograph it can be pointed out that the research is in-depth and is rich in hypotheses considered by the author. The transitions from one considered problem to another are smooth and logical, thus achieving a semantic integrity of the exposition. The language is accurate, understandable and legible, while showing that the author has a high level of mastery of private law, especially in the field of civil and contract law. Theses supported by the author are argued logically and in detail. Large Bulgarian case law on the issues related to the nullification of contracts due to deceit, and in my opinion practically all, accumulated over the years has been covered and critically analyzed. Significant and sufficient in volume for the purposes of the study relevant Bulgarian legal literature, as well as foreign literature was used. In connection with the skillfully used scientific apparatus in the work there is a feeling that the author has deliberately cited only the most important and significant special sources, which he dealt with in his research on the topic, avoiding self-centered citations and those with controversial relevance to the studied problems. The reader is also impressed by the author's ability to respect other people's opinions and to conduct ethical scientific discussions with other authors, although in some cases he does not share the ones expressed by them.

3.2. Scientific and scientific-applied contributions of the presented monographic research

After a careful reading of the candidate's habilitation thesis, the following significant and significant scientific and applied contributions of the author can be highlighted in his monograph, which is the first complete study in our country of deceit as a basis for the annulment of contracts and which in itself represents a scientific contribution:

- the first of its kind in the Bulgarian legal literature comparative legal review of deceit on the basis of the basic civil codes in Europe - French, German and Italian civil codes;
- the detailed clarification of each of the three elements of the factual composition of the deceit as a legally regulated ground for annulment of the contracts;
- the original approach to the legal phenomenon "deceit" used in the course of the analysis of the factual composition by outlining and clarifying its material and psychological element;

- the derivation of the peculiarities of deceit as one of the grounds established by law for the nullification of contracts;
- the in-depth analysis, which is a comparison and distinction between deceit and error as grounds for nullification of contracts, which is not only scientifically important but also of practical importance. In this connection, it is rightly emphasized that deceit, unlike error, is the result of morally reprehensible behavior committed most often by the other contracting party;
- the thesis supported by the author, supported by solid arguments, drawn mostly from the case law, that deceit can also be committed through inaction;
- an original contribution is the clarification of the so-called by the author twofold nature of deceit - on the one hand as a kind of error, but caused by morally reprehensible behavior, which on the other hand justifies the tort nature of this vice of will and therefore not only leaves it in the sphere of invalidity, but also put in the field of responsibility;
- the connection established by the author with convincing arguments between the precontractual liability under Art. 12 of the LOC and deceit in the light of the legal requirement for good faith in the regulation of contractual and precontractual relations;
- the analysis of the application of the deceit in the field of consumer relations and delimitation of the cases in which there is misleading advertising and other unfair commercial practices, but there is no deceit in the sense of art. 29 LOC;
- the convincingly substantiated conclusion about the possible and admissible qualification of the contract as partially invalid due to deceit;
- the reasonable understanding that deceit committed by a third party should not be seen as an exception but as a complication of its factual composition and the proposals made in this regard to improve the legislation;
- the detailed comparison between deceit as a ground for nullification and criminal fraud with the clear and precise delineation of their fields of application and the logical conclusion that they do not overlap, are not mutually exclusive and can coexist.

3.3. Critical remarks and recommendations to the presented monographic study

Very few critical remarks can be made to the inexhaustible scientific and applied contributions of the monograph presented in the previous point, which I find natural, given the fact that the candidate is one of the best acquainted authors who worked for many years on the problems of contract nullification. There is a certain structural imbalance in the explanation. The second chapter is too large in volume compared to the first and third. It was possible, in my opinion, to split the second chapter in two. In its first half to analyze the elements of the factual composition of the deceit, and in the other - to outline the features of the deceit as a ground for nullification and to make comparisons.

The third chapter sounds little misleading - "Special cases of deceit" In it, however, as a special case of deceit under Art. 29 of the LOC, the author has analyzed only the deception caused by a third party. And the second paragraph, the content of which is otherwise an excellent analysis, is devoted to a comparison between deceit and criminal fraud, and not to a special case of deceit under Art. 29 of the LOC. It almost turns out that criminal fraud is a "special case" of deceit, something that the author does not support properly.

The author has paid insufficient attention to the application of deceit in the field of commercial relations, where a number of features related to the subjects and the object of commercial contracts could also be pointed out. The work would have won if the author had

not been satisfied to point out in the introduction and in one or two more places in the exposition that the results of the analysis are respectively applicable to unilateral transactions according to the rule of Art. 44 LOC. It seems to me that in a comparison of deceit in contracts on the one hand and on the other hand in unilateral transactions such as empowerment, waiver of rights, promissory note, etc., would lead to important conclusions and would establish significant features of the application of deceit as a ground for nullification. Thus e.g. answers would be found such as: Who is the other party within the meaning of Art. 29, para. 1 of the LOC and who is a third party under Art. 29, para. 2 LOC in unilateral transactions. In this regard, the author may be recommended to supplement the exposition in subsequent editions of the monograph.

In my opinion, the application of deceit in *pacta aleatoria* is not sufficiently clearly argued. The analysis is based on three specific hypotheses of this kind of contracts - a contract for the transfer of property against care and maintenance, contracts with financial instruments and insurance contracts (pp. 136-140). There is no general conclusion and summary, and the author's position on the problem remains unclear.

3.4. Other publications of the candidate

Along with the monograph, the author has presented eight articles and reports published in specialized legal journals and collections related to the topic of habilitation work. In these publications individual problems are developed in detail, which are summarized and further developed in his monographic study. Through these publications, the author has significantly popularized his theses among academics and legal practitioners. It is good to note that some of these publications have a clear practical focus - e.g. the article „Judicial and Arbitration Practice On the Contracts' Avoidance, Caused by Deceit. Pravna misal, 2004, No 2, which observes judicial and arbitration decisions applying the Art. 29 of the LOC, “Notes about Two Questions, Which Are Observed by the Latest Judicial Practice, On the Border of Deceit and of Criminal Fraud.” – In: Bourgas Free University. International Academic Conference. Collection of Scientific Works. Vol. 3. 11th -13th June 2004. Bourgas. 2004, “The Crime “Fraud” and the Deceit in Contracts' Formation - A Comparison. - In: Iybileen sbornik po slutchay 100-godishninata ot rozhdenieto na akad. Liuben Vasilev i prof. Zhivko Stalev i 90-godishninata ot rozhdenieto na prof. Vitali Tadzher. S. 2013. Last two titles are papers present on scientific conferences and then – published. It is obvious that the candidate is not satisfied only with the purely theoretical aspects of the problems studied by him, but also always seeks their practical significance and the application of the scientific conclusions he reaches in his analyzes, for which he should be supported.

In addition to the scientific performances of the candidate, his participation in many different individual and collective research projects, mentioned in the materials submitted by the candidate, can also be noted.

3.5. Teaching activity of the candidate

During his nineteen years of teaching experience, the candidate - Dr. Angel Shopov has gained significant experience in teaching the subjects Civil Law – General Part, Obligations, NGOs, etc., having led both seminars and lectures. In addition, he shows teaching activity by developing new teaching materials for seminars and lectures in the disciplines taught by him, participates in the adaptation of curricula and more. He also took part in the preparation of a

textbook with cases for the state exam in Civil Law (co-authored). The candidate also works as a mentor in the national educational project "Student Internships".

5. Conclusion

The complex analysis of the habilitation work submitted for review and the other publications of the candidate in the competition Ch. Assistant Professor Dr. Angel Shopov imposes on me the indisputable conclusion that they are at a high theoretical level, contain significant scientific and scientific-applied contributions, and at the same time have significant practical significance. The notes made above in 3.3. have recommendatory nature and in no way reduce the high scientific level of the monographic study submitted for participation in the competition. The candidate also has the necessary teaching experience to hold the academic position of "Associate Professor".

Based on the above in my opinion, I believe that the scientific and teaching qualifications of the candidate in the competition are undoubtedly high. He has the necessary qualities of an in-depth researcher and experienced lecturer, and has met all the requirements provided by the Law on the Development of Academic Staff in the Republic of Bulgaria and in the Regulations for its implementation, for the academic position of associate professor.

In view of the conclusion made, I give a positive assessment of the candidate in the competition, Ch. Assistant Professor Dr. Angel Shopov and I will confidently vote in favor of the proposal that he take the academic position of "Associate Professor" in scientific field 3.6. Law and scientific specialty "Civil and Family Law" at the Faculty of Law of University of Plovdiv "Paisiy Hilendarski".

10.11.2020

Member of the scientific jury:

(Assoc. Prof. Dr. Miroslav Dimitrov)